IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

WP(C).No. 14096 of 2006(C)

OA.308/2000 of DEBT RECOVERY TRIBUNAL, ERNAKULAM
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PETITIONER:

C.M.NADIRSHA, S/O.K.MOHAMMED,
MUNADATH HOUSE, EDAYAPPURAM, ALUVA, PIN-683 101,
REPRESENTED THROUGH HIS POWER OF ATTORNEY
HOLDER M.M.KUNJUMOHAMMED, S/O.MOIDHEEN PILLAI,
MANADATHU HOUSE, EDAYAPPURAM, ERUMATHALA, ALWAYE.

BY ADV. SRI.BABU CHERUKARA

RESPONDENTS:
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1. THE SUB REGISTRAR,
THE SUB REGISTRAR'S OFFICE, ERNAKULAM.

2. THE RECOVERY OFFICER,
DEBT RECOVERY TRIBUNAL, 8TH FLOOR,
K.S.H.B. BUILDING, PANAMPILLY NAGAR,
KOCHIN-682 036.

3. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO REGISTRATION DEPARTMENT,
SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SMT. D.P.RENU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE PHOTOCOPY OF THE SALE CERTIFICATE DTD. 21/2/2006 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT.

EXT.P2 TRUE PHOTOCOPY OF THE LETTER DTD. 24/3/2006 BY THE 2ND RESPONDENT TO THE IST RESPONDENT.

EXT.P3 TRUE PHOTOCOPY OF THE LETTER DTD. 10/4/2006 BY THE IST RESPONDENT TO THE 2ND RESPONDENT.

EXT.P4 TRUE PHOTOCOPY OF THE JUDGMENT IN W.P.(C). NO.12114/2005 DTD. 21/6/2005 OF THIS COURT.

P.R.RAMAN,J.

W.P.(C).NO.14096 OF 2007

Dated this the 22nd day of January, 2007

JUDGMENT

Petitioner is an auction purchaser of an extent of 6.852 cents in Sy.No.84/3 in Elamkulam Village in Kanayannoor Taluk along with a building therein. Sale certificate is also issued as evidenced by Ext.P1, a copy of which was forwarded to the lst respondent by the 2nd respondent to file the same in Book No.1 as per Section 89(4) of the Registration Act. But the same was sent back by the lst respondent to the 2nd respondent stating that as per Clause 16 of Schedule to Kerala Stamp Act, the sale certificate is to be prepared in stamp paper worth Rs.1,17,300/-. It is contended that the view taken by the Sub Registrar (lst respondent) is wrong and

contrary to the decision of the Apex Court reported in **Shanti Devi L.Singh v. Tax Recovery Officer and others ((1990) 3 SCC 605).**

2. First respondent has filed a counter affidavit. As per the averments made in the counter affidavit, the sale certificate is chargeable to stamp duty under Article 16 of the Schedule to the Kerala Stamp Act and as per Section 30 (c), the purchaser of the property is liable to pay the stamp duty.

3. In **Shanti Devi's case ((1990) 3 SCC 605)** the question arose for consideration was as to whether the sale certificate issued by Tax Recovery Officer to purchaser of immovable property (house) sold in court auction pursuant to income tax recovery proceedings and whether the Sub Registrar is required to

file a copy of the certificate in his Book No. I under Section 89(4). It was held that the sale certificate is not compulsorily registrable document and the Revenue Officer in Section 89(4) includes the Tax Recovery Officer. Filing of a copy of sale certificate in Book No.1 under Section 89(4) does not amount to registration of the document. True that the filing of the sale certificate in Book No.1, in the absence of registration, will not put the purchaser at court or revenue sale under any disadvantage. Certificate of sale itself not being a compulsory registrable document, transfer of title in his favour is not vitiated by non-registration of the certificate. From the dictum laid down by the Apex Court, sale certificate issued by the Tax Recovery Officer, a copy of which has to be filed in Book No.1, does not mean

registration. As such the question of stamp duty does not arise, in the light of the Apex Court's decision. When a copy of the sale certificate is received, the Registering Officer shall file the copy or copies, as the case may be, in his Book No.1. It was also held that there is no need to read the term "Revenue Officer" in any restricted sense and that it is wide and comprehensive enough to include the TRO, who effects a compulsory sale for the recovery of an income tax demand. Therefore, the Registration Officer has to act in terms of Section 89(4) of the Indian Registration Act read with Rule 21 of the ITCP Rules. This is to file a copy of the sale certificate received by him from the TRO in his Book No.1. By Ext.P4 judgment in W.P.(C). No.12114/2005 this Court in similar circumstances, following the decision of the

Apex Court cited supra, allowed the writ petition directing the Sub Registrar to file the sale certificate in Book No.1 in terms of the request made by the petitioner and on the second respondent sending the same to the lst respondent.

4. In the light of the above decision, this writ petition is allowed directing the Recovery Officer to forward copy of the sale certificate to the lst respondent herein, whereupon he shall file the same in Book No.1 in terms of Section 89(4) of the Registration Act.

P.R.RAMAN,
Judge.

kcv.